IN THE HIGH COURT OF UTTARAKHAND AT NAINITAL

WRIT PETITION NO. 1529 OF 2005 (S/S)

Smt. Bhuwaneshwari Devi .....Petitioner.

Versus

Accountant General (A & E) West Bengal and others.
.....Respondents.

Present: Mr. I.D. Paliwal, Advocate for the petitioner.
Mr. Pradeep Joshi, Standing Counsel for the Union of India.

Hon'ble Sudhanshu Dhulia, J. (Oral)

1. Heard Mr. I.D. Paliwal, Advocate for the petitioner and Mr.Pradeep Joshi, Standing Counsel for the Union of India.

2. The petitioner is widow of Sri *Jiwa Nand*, who was an employee in West Bengal Police Force. Husband of the petitioner retired from service in the year 1948, and thereafter in the year 1973, he died. Now, his widow i.e. the petitioner after more than 32 years has filed a writ petition before the High Court of Uttarakhand at Nainital seeking family pension from the respondents.

3. Apart from the question of latches which the petitioner has to answer, this writ petition is liable to be rejected at the very threshold on the ground of lack of jurisdiction, inasmuch as, neither any "cause of action" nor any "part of cause of action" as contemplated under Article 226 of the Constitution of India arises in the territory of the State of Uttarakhand, as the cause of action arose only in the territory of West Bengal.

4. A Full Bench of Allahabad High Court in **Rajendra Kumar Mishra Vs. Union of India and others** reported in **[(2005) 1 UPLBEC 108]**, on the question as to which High Court shall have jurisdiction in such matters, after considering the entire law on the subject including the

decision of the Supreme Court in **Dinesh Chandra Gahtori Vs. Chief of Army Staff and another** reported in **(2001) 9 SCC 525** stated as follows:

> "10. In our opinion the observation in the aforesaid decision "The Chief of Army Staff may be sued in any High Court in the Country" cannot be construed to mean that the Supreme Court has laid down any absolute proposition that it is open to the petitioner to file a writ petition in any High Court in India. Such as absolute proposition as canvassed by the learned Counsel for the petitioner may lead to conflicting decisions because different petitions can be filed in different High Courts by co-accused in the same case and conflicting decisions can be given.
> 11. It may be noted that the aforesaid observation in the three Judges decision of the Supreme Court in Dinesh Chandra Gahtori's case (supra) is only a laconic observation and it cannot be override Larger Bench decisions of the Supreme Court.
> 12. In the present case it may be noted that the misconduct was committed at the Calcutta and Summary Court Martial was also held at Calcutta. Thus the entire cause of action arose at Calcutta. We, therefore, fail to understand how a writ petition can be entertained at Allahabad High Court where no part of the cause of action had arisen."

5. In the same Full Bench decision, the Court referred to various decisions of the Supreme Court and came to the conclusion that in such matters only that High Court will have jurisdiction in whose territorial area the order impugned has been passed.

6. Referring the case of Supreme Court in **Lt. Col. Khajoor Singh Vs. Union of India Air 1961 SC 532**, the Full Bench of the Allahabad High Court has further stated as follows:

> "13. In our opinion merely because the petitioner is presently residing in Ballia this will not give jurisdiction to this Court in view of the Seven Judges Bench decision of the Supreme Court in Lt. Col. Khajoor Singh v. Union of India, AIR 1961 SC

532. In paragraph 13 of the aforesaid decision the Supreme Court observed:

> "Now it is clear that the jurisdiction conferred on the High Court by Article 226 does not depend upon the residence or location of the person applying to it for relief; it depends only on he person or authority against whom a writ is sought being within those territories. It seems to us, therefore, that it is not permissible to read in Article 226 the residence or location of the person affected by the order passed in order to determine the jurisdiction of the High Court. That jurisdiction depends on the person or authority passing the order being within those territories and the residence or location of the person affected can have no relevance on the question of the High Court's jurisdiction. Thus if a person residing or located in Bombay, for example, is aggrieved by an order passed by an authority located, say, in Calcutta, the forum in which he has to seek relief is not the Mumbai High Court though the order may affect him in Bombay but the Calcutta High Court where the authority passing the order is located. It would, therefore, in our opinion be wrong to introduce in Article 226 the concept of the place where the order passed has effect in order to determine the jurisdiction of the High Court which can give relief under Article 226."

7**.** The Full Bench of Allahabad High Court has also referred the decision of the Supreme Court in **Oil and Natural Gas Commission Vs. Utpal Kumar Basu** reported in **(1994) 4 SCC 711**, where the Supreme Court held as under:

> "Under Article 226 a High Court can exercise the power to issue directions, orders of writs for the enforcement of any of the fundamental rights conferred by Part III of the Constitution or for any other purpose if the cause of action wholly or in part, had arisen within the territories in relation to which it exercises jurisdiction, notwithstanding that the seat of the Government or authority or the residence of the person against whom the direction, order or writ is issued is not within the said territories. The expression "cause of action" means

> that bundle of facts which the petitioner must prove, if traversed, to entitle him to a judgment in his favour by the Court. Therefore, in determining the objection of lack of territorial jurisdiction the Court must take all the facts pleaded in support of the cause of action into consideration albeit without embarking upon an enquiry as to the correctness or otherwise of the said facts. Thus, the question of territorial jurisdiction must be decided on the facts pleaded in the petitioner, the truth or otherwise of the averments made in the petition being immaterial."

8. Relying upon the case of Supreme Court in **Rajasthan High Court Advocates Association v. Union of India and others, AIR 2001 SC 416**, the Full Bench of the Allahabad High Court has stated as under:

> "21. Similarly in Rajasthan High Court Advocates Association v. Union of India and ors, AIR 2001 SC 416, the Supreme Court held that clauses (1) and (2) of Article 226 of the Constitution provide how territorial jurisdiction shall be exercised by any High Court and one of the test may be as to whether the cause of action partly or fully has arisen within its territorial jurisdiction. While deciding the said case reliance was placed upon the Court's earlier judgment in U.P. Rashtriya Chini Mill Adhikari Parishad v. State of U.P., (1995) 4 SCC 738, wherein it had been held that the expression "cause of action" has acquired a judicially-settled meaning. In the restricted sense, cause of action means the circumstances forming, the infraction of the right of the immediate occasion for the action. In the wider sense, it means the necessary conditions for the maintenance of the suit, including not only the infraction of the right, but the infraction coupled with the right itself. Compendiously the expression means every fact which it would be necessary for the plaintiff to prove, if traversed, in order to support his right to the judgment of the Court. Every fact which is necessary to be proved, as distinguished from every piece of evidence which is necessary to prove each fact, comprises the "cause of action". It has to be left to be determined in each individual case as to where the cause of action arises."

9. It is true that after the amendment made in Article 226 of the Constitution, the jurisdiction would depend upon the "cause of action" or "part of cause of action" and not merely on territory. However, it is the considered view of this Court merely because the petitioner resides in the territory of Uttarakhand will not constitute "a cause of action", as contemplated under Article 226 of the Constitution of India.

10. The Court is satisfied that no cause of action arises in the territory of Uttarakhand and that it has no jurisdiction to entertain the writ petition. The writ petition therefore is liable to be dismissed and is hereby dismissed.

11. No order as to costs.

12. Interim order, if any, stands vacated.

(Sudhanshu Dhulia, J.)
22.3.2011

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